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LAW AND THE FAMILY. By Robert Grant. New York: Scribners' Sons. 1919.

Under the title of "Law and the Family" Judge Robert Grant of the Boston, Massachusetts, Probate Court has collected a series of essays or papers for laymen upon such subjects as Women and Property, the Relation of the Third Generation to Invested Property, generally when it comes out of trust, the Perils of Will-Making, the Future of Women under the Law, Domestic Relations, Feminine Independence, and Marriage and Divorce.

The position of Judge of Probate in an important county in a New England state may, under favorable circumstances, be a singularly interesting and broadening experience, and Judge Grant in his varying capacity as an author and a judge is excellent evidence of the possibilities of this office. Departing in this case from his more usual habit of writing fiction, he applies the insight of an author to the problems of an administrative judge. A good judge of probate never loses touch with the lay portions of the community. Every twenty years or so all the property in the community passes through his court and under his eye. A very substantial part of that property remains under his eye year after year as trust property. The interpretation of the law to laymen could not easily come from a better source. The man who is part judge, part *parens patrii*, and part administrator, must necessarily understand the institutions of property and inheritance as laymen experience them.

The variety of subjects dealt with by Judge Grant is too great for comment here. From the interesting suggestion that women will make good executors based upon the will of the late Secretary of State Richard Olney, through the discussion of whether it is better to have a conservative trustee or a brave one, Judge Grant passes on to the melodrama of adoption, the domestic relations, and divorce.

His book merits attention principally because of the skill and insight with which he presents the common sense of law as he administers it. His views should be interesting both to the laymen who do not understand law, and to the lawyers who cannot see the wood for the trees.

BOSTON.

RICHARD W. HALE.

CASES ON THE LAW OF EVIDENCE. By Edward W. Hinton. St. Paul: West Publishing Company. 1919. pp. xxiii, 1098.

This collection of cases is well adapted to its purpose: instruction in the law schools. The arrangement is especially good. In chapter I the editor treats of the respective functions of court and jury, including such topics as The Burden of Proof, Presumption, and Judicial Notice. Some difference of opinion exists among teachers as to the proper placing of these extraneous matters; Professor John H. Wigmore in both editions of his *Cases on Evidence* placed them near the end; and many teachers have followed this method in the arrangement of their courses; on the other hand, Professor Hinton follows Professor James Bradley Thayer in treating them at the beginning. The writer ventures the opinion that the latter is the better method, since these topics mainly involve certain matters of procedure which the student should know before he is called upon to examine cases dealing with the law of evidence proper. Moreover the topics are comparatively difficult and uninteresting; it is true that for this reason some instructors prefer to take them up last, but it is submitted that it is better for instructor and student to get this rather disagreeable task out of the way as soon as possible.

Chapter II deals with Witnesses. Certain instructors have preferred to treat this subject first, being largely influenced by the fact that it is the part of the course most attractive to the student. In Thayer's *Cases* the subject is treated

last. Professor Hinton justifies his intermediate arrangement by the assertion that the rules relating to witnesses throw light on the hearsay rule. On the other hand, it is obvious that a knowledge of the hearsay rule is valuable in dealing with privilege and impeachment, and therefore it seems that there would be good reason for retaining Mr. Thayer's arrangement.

The editor has seen fit to devote sixty-nine pages to the subject of privilege; it is submitted, however, that a larger treatment is desirable in view of the uncertainty and difficulty of the law and the frequent recurrence of decisions relating to this subject.

Chapter III treats of The Hearsay Rule. It is a notable feature that the editor discards the classification of *res gesta*, which is probably a wise change in view of the many perversions of the term. He also omits the usual classification of Declarations of Mental State, arranging cases of the type of *Mutual Life Insurance Company v. Hillmon* under the heading of "Spontaneous Statements." It is submitted that it is difficult to discover the spontaneity of such statements and that it would have been preferable to adhere to the former practice as exemplified by the collections of Professor Thayer and Professor Wigmore.

The arrangement of the remaining chapters, which deal with Opinion, Circumstantial Evidence (including Character), The Best Evidence Rule, and The Parol Evidence Rule, reflects the experiences of the able teacher.

In truth the book is replete with instances showing the editor's purpose to make it a book useful for teaching. Perhaps there has been a sacrifice of logical arrangement in some parts; but this result is fully justified by the fact that it meets the requirements of the natural order of presentation. The section dealing with Character is an illustration of the way in which the editor has kept his objective constantly in mind. In this section he deals, in the order named, with the character of the defendant in a criminal action, the character of the deceased in a prosecution for homicide, the character of the prosecutrix in a prosecution for rape, the moral character of a party to a civil action, and character for carefulness or negligence in a civil action. A further illustration is found in chapter IV, entitled Opinion and Conclusions, which deals successively with the lay witness, the expert witness, and the subject of handwriting.

Professor Hinton recognizes the impossibility of crowding the whole of this immense subject into the limits of a single case book, but it is remarkable how far he has gone toward achieving this result. He has accomplished this by a judicious selection and abridgment of cases and by the use of appropriate foot-notes. Facts are usually fully stated, or if condensed, carefully summarized; and no unduly long opinions are reproduced. The foot-notes are numerous, concise and apparently accurate. Certain matters have been unavoidably passed over, but it is believed that the matters which the lawyer meets most frequently in practice are given proper place in the book.

The immensity of the subject has given to the editor opportunity to select new cases; comparatively few of his cases are contained in previous collections; the book is original as to contents as well as to arrangement. Furthermore, the cases appear to have been wisely selected with respect to time; while all stages in the history of the law of evidence are represented, recent cases are properly given a large place.

Altogether the book is a valuable contribution to the subject, and reflects sane, careful, and scholarly preparation in a marked degree.

MORTON C. CAMPBELL.